IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BILLY WOOD — PLAINTIFF

VS. — Civil Action No. 1:93cv374-D-D

GARY RICHARDSON, individually,
PAUL SWINDOL, individually,
ZACK STEWART, individually, and
ROBERT ROBINSON, individually — DEFENDANTS

MEMORANDUM OPINION

This matter before the undersigned a motion by the defendants for summary judgment under Federal Rule of Civil Procedure 56. Original jurisdiction lies with this court by virtue of 28 U.S.C. § 1343. Plaintiff Billy Wood asserts that he was terminated from his position with the Mississippi State Highway Commission based upon his affiliation with the former State Highway Commissioner Bobby Richardson, in that Richardson and current State Highway Commissioner Zack Stewart are political rivals. Wood asserts that the termination of his employment violated his First Amendment rights of association and speech, and has brought this action under 28 U.S.C. § 1983.

Based on a through review of the parties pleadings, affidavits, briefs, authorities, and the record as a whole, the court hereby grants the defendants' motion for summary judgment as to plaintiff's claim under his First Amendment right to free speech, and denies the motion as to the plaintiff's First Amendment

right to freedom of association.

I. BACKGROUND AND FACTS

Plaintiff Billy Wood was employed with the Mississippi State Highway Commission for approximately eleven years prior to his termination in September of 1993. In May of 1993, another employee of the Commission, Betty Poteet, filed sexual harassment charges against Wood with the Mississippi Department of Transportation. Wood was Poteet's immediate superior in the department. An investigation followed, and Wood was later terminated. Beyond these meager facts, the parties disagree about what really happened.[1]

Wood asserts that his termination was not based on the sexual harassment charges, but that those charges were fabricated and used as an excuse for his termination. (Plaintiff's Complaint, ¶ V.) Wood contends that it was well-known around the Department of Transportation that since Zack Stewart had taken office as Commissioner, Stewart had made a conscious effort to fire as many people as possible who were supporters of the previous Commissioner, Bobby Richardson. (Affidavit of Gerald Creely, Affidavit of Bobby Wood, Affidavit of Freddie Oaks). A former administrative assistant to Bobby Richardson and later for Zack

[1] In that the court must consider all facts in the light most favorable to the plaintiff in a motion for summary judgment under Federal Rule of Civil Procedure 56, the remaining facts stated in this opinion are drafted in favor of the plaintiff.

Stewart asserts that Stewart told him he was fired because "of his [Stewart's] politics." (Affidavit of Gerald Creeley). A similar story is told by Freddie Oaks, who claims that he was fired from the Department of Transportation because of his political support of Bobby Richardson. (Affidavit of Freddie Oaks).

II. DISCUSSION

1. SUMMARY JUDGMENT STANDARD

Summary Judgment reinforces the purpose of the rules to achieve a "just, speedy, and inexpensive determination" of actions. F.R.C.P. 1. No longer considered a procedural shortcut, summary judgment is an integral part of the framework of the Rules and permits early elimination of claims and defenses which the proponents cannot support. Fontenot v. Upjohn Co., 780 F.2d 1190, 1197 (5th Cir. 1986).

> The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.

Fed. R. Civ. Pro. 56, advisory committee note on the 1963 amendments to rule 56(e) (quoted in Fontenot, 780 F.2d at 1196). Proper use of Rule 56 "affords a merciful end to litigation that would otherwise be lengthy and expensive." Pope v. Mississippi Real Estate Commission, 695 F. Supp. 253, 261 (N.D. Miss. 1988) (quoting Fontenot, 780 F.2d at 1197). Equally important as the need for expediency are the demands of justice. Therefore, the court balances both and will not casually deny a party the

protections inherent in a full blown trial. Pope v. Mississippi Real Estate Commission, 695 F. Supp. at 261.

a. The Movant's Initial Responsibility

As initially stated, summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law -- that is the well-settled general rule in this circuit. E.g., St. Amant v. Benoit, 806 F.2d 1294 (5th Cir. 1987); Bordelon v. Block, 810 F.2d 468 (5th Cir. 1986); Williams v. Taylor, 677 F.2d 510 (5th Cir. 1982); Pope v. Mississippi Real Estate Commission, 695 F. Supp. at 261; Fed. R. Civ. Pro. 56(c).

> [A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.[2]

Pope v. Mississippi, 695 F. Supp. at 261 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L.Ed.2d 265, 276 (1986)) (emphasis added).

b. The Non-Movant's Evidentiary Burden

The summary judgment scheme provides for a shifting burden between movant and non-movant as to the existence of genuine issues

[2] A fact is material if it is outcome determinative in the relevant area of substantive law. Saint Amant, 806 F.2d at 1297.

of material fact. To survive summary judgment and bring the case to trial, the non-movant must be able to show that there is a genuine issue of material fact concerning an essential element of his case. Aladdin Oil Co. v. Texaco,Inc., 603 F.2d 1107, 1112 (5th Cir. 1979); Bordelon v. Block, 810 F.2d at 470. The mere existence of a factual dispute does not by itself preclude a court from granting summary judgment -- the requirement is that there be no genuine issue of material fact. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 91 L.Ed.2d 202, 211 (1986) (emphasis in original).

Although the court does not assess the probative value of the material presented, Jones v. Western Geophysical Company of America, 669 F.2d 280, 283 (5th Cir. 1982), evidence offered in opposition to the summary judgment motion that is clearly without any probative force is insufficient to create a genuine issue. Pope v. Mississippi Real Estate Commission, 695 F. Supp. at 262. Rule 56(e) provides in pertinent part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(emphasis added). Denials or allegations by the non-moving party in the form of legal conclusions that are unsupported by specific facts have no probative value. Thus, they are insufficient to

create genuine issues of material fact, a showing of which, would preclude summary judgment. Broadway v. City of Montgomery, Alabama, 530 F.2d 657, 660 (5th Cir. 1976); see also Benton-Volvo-Metairie, Inc. v. Volvo Southwest, Inc., 479 F.2d 135, 139 (5th Cir. 1973).

c. The Court's Duty and the Summary Judgment Standard

To reiterate, Rule 56 expressly provides that the court should grant summary judgment if (1) there is no genuine issue of material fact and (2) the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56(c). The Court must first consider the evidentiary record to determine whether a genuine issue of material fact exists. Pope v. Mississippi Real Estate Commission, 695 F. Supp. at 263 (emphasis in original). The purpose of this inquiry is to see whether the case should proceed to trial. The Supreme Court has repeatedly indicated that "there is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." Id. at 263, quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202, 212. In other words, the court must decide if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Bache v. American Telephone and Telegraph (AT&T), 840 F.2d 283, 287 (5th Cir. 1988). There is no "genuine issue" where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.

Matsushita v. Zenith, 475 U.S. 574, 587 106 S. Ct. 1348, 1355-56, 89 L.Ed.2d 538, 552 (1986). Thus, genuine factual issues are those which could be reasonably resolved in favor of either party; such issues can only be properly resolved by a finder of fact at trial. Pope v. Mississippi, 695 F. Supp. at 263, quoting Anderson, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d at 213.

The court must also determine if the factual issues in dispute are material. Pope v. Mississippi, 695 F. Supp. at 263.

> Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude an entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Anderson, 477 U.S. at 248, 106 S. Ct. at 2510, 91 L.Ed.2d at 211; Celotex, 477 U.S. at 322, 106 S. Ct. 2552, 91 L.Ed.2d at 273.

After determining that there are no genuine issues of material fact, the court must determine whether the moving party is entitled to judgment as a matter of law. Pope v. Mississippi, 695 F. Supp. at 263. The applicable standard for granting summary judgment is the same standard used in granting directed verdicts under Fed. R. Civ. Pro. 50(a). The court "must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict." Anderson, 477 U.S. at 250, 106 S. Ct. at 2511, 91 L.Ed.2d at 213. Summary judgment motions should be granted "so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment as set forth in Rule 56(c) is satisfied." Celotex, 477 U.S. at 321, 106 S. Ct. at 2553,

91 L.Ed.2d at 274.

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of the element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no issue of material fact,' since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to judgment as a matter of law because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex, 477 U.S. at 323, 106 S. Ct. at 2553, 91 L.Ed.2d at 273. When there is no trace of any significant probative evidence supporting his contentions, the non-movant cannot be entitled to a trial. Pope v. Mississippi, 695 F. Supp. at 264. "To permit the pleadings themselves to carry a case to trial when they rest only on the invention of counsel would permit ultimate circumvention of [the Federal Rules of Civil Procedure]." Fontenot, 780 F.2d at 1196. Having set forth in detail the formula used in deciding summary judgments motions, the court is ready to take up plaintiffs' asserted claims.

2. FIRST AMENDMENT CLAIMS

a. Freedom of Speech

Wood asserts in his complaint that the actions of the defendants violated his first amendment right to freedom of speech. (Plainitff's complaint, ¶ II). However, he does not reveal what that speech was, nor when it occurred. Nowhere in the pleadings or

affidavits is there mention of this speech. Without knowing what this speech is or the circumstances surrounding this speech, this court cannot determine whether that speech was protected by the First Amendment. In that there appears to be no genuine issues of material fact regarding this claim, summary judgment on this claim is granted in favor of the defendants.

b. Freedom of Association

Wood asserts that he was terminated based upon his status as a "Richardson Man," that is, his affiliation with Bobby Richardson. (Plaintiff's complaint, ¶ IV). This action concerns whether the termination of Wood's employment violated the First Amendment. The law applicable to this determination is very well established, and the decision of Kinsey v. Salado Independent School Dist., 950 F.2d 988, 993 (5th Cir. 1992), is particularly enlightening on the topic. In accordance with the opinion in Kinsey, this court must first determine what category of First Amendment employment cases the present situation falls under. There have been three types of cases decided under the First Amendment in this vein: 1) cases involving only speech; 2) cases only involving only political association; and 3) cases involving both speech and political association. Kinsey, 950 F.2d at 992. Wood has asserted that his termination was based on his association with Bobby Richardson. There is nothing contained in the papers before this court to indicate or imply that Wood was terminated for any actual political

activity which he participated in. Therefore, this case falls under the category of being one involving only political association.

The "[f]reedom to associate with others for the common advancement of political beliefs and ideals is . . . protected by the First and Fourteenth Amendments." Elrod v. Burns, 427 U.S. 347, 357, 49 L.Ed.2d 547, 96 S.Ct. 2673, 2681 (1976); Coughlin v. Lee, 946 F.2d 1152, 1158 (5th Cir. 1991). Our Supreme Court has found unconstitutional the firing of public employees based solely on political association or patronage, unless a different affiliation is "an appropriate requirement for the effective performance of the public office involved." Coughlin, 946 F.2d at 1158 (quoting Branti v. Finkel, 445 U.S. 507, 518, 63 L.Ed.2d 574, 100 S.Ct. 1287, 1295 (1980)). "[P]romotion, transfer, recall, and hiring decisions involving low-level public employees [cannot] be constitutionally based on party affiliation or support." Rutan v. Republican Party of Illinois, --- U.S. ---, 110 S.Ct. 2729, 2732, 111 L.Ed.2d 52 (1990).

In that this case involves only political association, the court must "balance the First Amendment values implicated by those [political] activities against the possible disruptive effect on governmental provision of services within the specific context of

each case."[3] Kinsey, 950 F.2d at 993; Coughlin, 946 F.2d at 1158 (citing McBee v. Hogg County, 730 F.2d 1009, 1016-17 (5th Cir. 1984)). This plaintiff has the burden of proof to establish his claim under this balancing test.[4] This balancing test is "not an all-or-nothing but rather a sliding scale under which 'public concern' is weighed against disruption . . ." Matherne v. Wilson, 851 F.2d 752, 761 (5th Cir. 1988) (quoting Gonzalez v. Benavides, 774 F.2d 1295, 1302 (5th Cir. 1985)). While prior decisions have rested on whether or not the employee was a "policy maker" or in a "confidential" position[5], this distinction is not completely dispositive:

In sum, the ultimate inquiry is not whether the label "policy

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[3] Had this case involved actual speech or political activity, instead of mere affiliation, the plaintiff would first have to establish as a matter of law that the speech or activity involved a matter of "public concern." Boddie v. City of Coulumbus, 989 F.2d 745, 747 (5th Cir. 1993); Connick v. Myers, 461 U.S. 138, 147-48, 103 S.Ct. 1684, 1690-91, 75 L.Ed.2d 708 (1983); Coughlin, 946 F.2d at 1156-57; Kinsey, 950 F.2d at 992. Since it does not, however, we go directly to this balancing test. Kinsey, 950 F.2d at 993.

[4] While the plaintiff has the burden of proof under this balancing test, the court must note that cases involving only political affiliation are "at the extreme end of the employee's side, where little, if any, weighing is called for." McBee v Jim Hogg County, 730 F.2d 1009, 1014 (5th Cir. 1984).

[5] See Elrod, 427 U.S. at 367-68, 96 S.Ct. at 2686-87; Soderstrum v. Town of Grand Isle, 925 F.2d 135, 139 (5th Cir. 1991); Stegmaier v. Trammel, 597 F.2d 1027 (5th Cir. 1979). Nonetheless, a "confidential" or "policy making" employee's First Amendment rights are more easily outweighed in this balancing test than the rights of others. Kinsey, 950 F.2d at 994; Soderstrum, 925 F.2d at 140.

> maker" or "confidential" fits a particular position; rather the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement of the public office involved.

Branti, 445 U.S. at 517-18, 100 S.Ct. at 1294-95.

In weighing the plaintiff's claim under this balancing test, several factors are considered: 1) whether the employees actions involve "public concerns"; 2) whether "close working relationships" are essential to fulfilling the employee's public responsibilities; 3) the time, place, and manner of the employee's activity; 4) whether the activity can be considered "hostile, abusive, or insubordinate"; and 5) whether the activity "impairs discipline by superiors or harmony among coworkers." Click v. Copeland, 970 F.2d 106, 112 (5th Cir. 1992); Matherne, 851 F.2d at 760 & nn. 47-48; McBee, 730 F.2d at 1016-17.

Once the plaintiff has established his right to assert his claim under this threshold balancing test, he must then prove the merit of his claim. The plaintiff has the burden of establishing: 1) that his conduct was protected by the first amendment; and that 2) his conduct was a "substantial" or "motivating" factor in his termination. Click, 970 F.2d at 113 (citing Mount Healthy City School District v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977)). If the plaintiff can pass the threshold balancing test previously discussed, he has established that his conduct was protected by the First Amendment. Click, 970 F.2d at 113. Once the plaintiff then demonstrates the "substantial" or "motivating"

factor requirement, the burden shifts to the defendants to show by a preponderance of the evidence a legitimate reason to have taken the same action against the defendant in absence of the plaintiff's protected conduct. Id. This reason may then be refuted by the plaintiff by demonstrating that the proffered reason is "merely pretextual." Mount Healthy, 429 U.S. at 287, 97 S.Ct. at 576; Click, 970 F.2d at 113; Coughlin, 946 F.2d at 1157.

The primary question to be determined in this litigation is the motivation of the defendants in terminating Mr. Wood's employment. Whether a substantial or motivating factor in his termination was his political affiliation with Bobby Richardson is a question of fact. Normally, the determination of a "substantial" or "motivating" factor renders these cases inappropriate for summary judgment. Brawner v. City of Richardson, 855 F.2d 187, 193 (5th Cir. 1988).

It is important to remember, however, that the reason for the termination must be political in order to violate the First Amendment - it must be based on the employee's allegiance to a political party, a political candidate, or political belief. Correa v. Fischer, 982 F.2d 931, 934 (5th Cir. 1993). In Correa, the Fifth Circuit affirmed a grant of summary judgment in a patronage case, because they determined that the plaintiff had offered no proof that the firings were politically motivated. Correa, 982 F.2d at 934. The court put emphasis on the fact that

the person whom the employees supported did not run for office against their employer, thereby precluding the existence of support for a political candidate. Id. The plaintiff in the case at hand has offered nothing in support of his claim with regard to a political belief or party, but only that he was fired for being a supporter of Bobby Richardson. Mr. Wood does not specifically allege the termination was based on his **political** support of Bobby Richardson, nor does he offer any specific proof on that point. However, the circumstantial evidence surrounding this case is marginally sufficient to allow this court to find the possibility of a political motive and preclude summary judgment on this point. Even though the plaintiff failed to bring this matter to the court's attention, the plaintiff's claim is saved by this court's willingness to take notice of the fact that Bobby Richardson ran opposite Zack Stewart for the office of Highway Commissioner in 1983. That fact alone appears to distinguish the case at hand from Correa.

The defendants' motivation in firing the plaintiff is a genuine issue of material fact which must be determined by a trier of fact, making this case inappropriate for summary judgment. Other genuine issues of material fact are present here. The extent to which Mr. Wood's position was one of a "policy-maker" or "confidential" is such a fact to be determined, as well as whether the sexual harassment charges asserted by the defendants as the

real reason behind Mr. Wood's release are merely a pretext for his termination.

3. QUALIFIED IMMUNITY OF THE DEFENDANTS

Even though there are genuine issues of material fact as to the defendants' liability for a possible violation of the plaintiff's first amendment rights, the defendants might still escape liability via qualified immunity. If qualified immunity protects the defendants, summary judgment would be appropriate on these claims notwithstanding the issues discussed thusfar.

Whenever qualified immunity is asserted as an affirmative defense, resolution of the issue should occur at the earliest possible stage. Anderson v. Creighton, 483 U.S. 635, 639, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987); Elliott v. Perez, 751 F.2d 1472, 1478 (5th Cir. 1985). Public officials are normally entitled to assert the defense of qualified immunity in a § 1983 suit for acts occurring in the course of their official duties. Harlow v. Fitzgerald, 457 U.S. 800, 806, 102 S. Ct. 2727, 73 L.Ed.2d 396, 403 (1982); Gagne v. City of Galveston, 805 F.2d 558, 559 (5th Cir. 1986); Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir. 1986). Public officials are shielded from liability for civil damages as long as their conduct does not violate clearly established federal statutory or constitutional rights of which a reasonable person would have known. Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987); Davis v. Scherer, 468 U.S.

183, 194, 104 S. Ct. 3012, 3019, 82 L.Ed.2d 139 (1984); Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). Stated differently, qualified immunity provides "ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096, 89 L.Ed.2d 271 (1986). It must be determined ". . . not whether the law was settled, viewed abstractly, but whether, measured by an objective standard, a reasonable [official] would know that his action was illegal." Boddie v. Columbus, 989 F.2d 745, 748 (5th Cir. 1993); Click v. Copeland, 970 F.2d 106, 109 (5th Cir. 1992) (quoting Matherne v. Wilson, 851 F.2d 752, 756 (5th Cir. 1988)).

The first step in the inquiry of the defendant's claim of qualified immunity is whether the plaintiff has alleged the violation of a clearly established right. Siegert v. Gilley, 500 U.S. 226, 111 S. Ct. 1789, 114 L.Ed.2d 277, 287 (1991). This inquiry necessarily questions whether or not the officer acted reasonably under settled law in the circumstances which were confronted. Hunter v. Bryant, 500 U.S. 224, 112 S. Ct. 534, 116 L.Ed.2d 589, 596 (1991); Lampkin v. City of Nacogdoches, No. 91-4702, slip op. at 1091-92 (5th Cir. Nov. 18, 1993).

The defendants in the case at hand are all public officials who may be shielded with qualified immunity for the discretionary actions that were performed by them in the termination of Mr.

Wood's employment. Therefore, this court must decide whether it was "clearly established" in September of 1993 that a public official could not constitutionally terminate the employment of an employee for their political beliefs. This court is of the opinion that such was clearly established.

"The first amendment protects the right of all persons to associate together in groups to further their lawful interests." Allee v. Medrano, 416 U.S. 802, 819 n.13, 94 S.Ct. 2191, 2202 n.13, 40 L.Ed.2d 566 (1974); Boddie, 989 F.2d at 749; Professional Ass'n of College Educators v. El Paso County Community College Dist., 730 F.2d 258, 262 (5th Cir. 1984). The first amendment also protects political belief and thought. As noted in the above section on the plaintiff's first amendment claims, it has long been settled that termination of employment based solely on political beliefs is a violation of the constitutional right of free association. E.g., Branti v. Finkel, 445 U.S. 507, 63 L.Ed.2d 574, 100 S.Ct. 1287 (1980); Elrod v. Burns, 427 U.S. 347, 49 L.Ed.2d 547, 96 S.Ct. 2673 (1976).

The defendants also assert that the plaintiff has failed to properly plead his claims. The defendants allege that the plaintiff must meet a "heightened pleading" requirement in order to defeat qualified immunity on these claims. The defendants state that the plainitff must come forward with specific, direct evidence of illicit intent on the part of the defendants. A requirement of

such direct evidence has been explicitly rejected by this circuit. Tompkins v. Vickers, 26 F.3d 603, 609 (5th Cir. 1994). The plaintiff need only produce circumstantial evidence of illicit intent. Tomkins, 26 F.3d at 609. It is the court's opinion that the plainitff has produced such circumstantial evidence, albeit only marginally adequate. Affidavits produced by the plaintiff refer to circumstances of other employees who were discharged from the Department of Transportation allegedly for their affiliation with Bobby Richardson, and to a statement made to Wood by defendant Zack Stewart that Wood might be fired because of Wood's support for Richardson.

Were a trier of fact to determine that the motivation behind Wood's termination of employment his political support for Bobby Richardson, qualified immunity would not be the defendants' saving grace. If, however, the trier of fact were to determine that the motivation for Wood's termination was not unconstitutionally motivated, qualified immunity would be irrelevant, in that the defendants would not be liable. Again, the isssue of the defendants motivation in firing the plaintiff is a genuine issue material fact. Accordingly, summary judgment is not appropriate for the issue of qualified immunity.

A separate order in accordance with this opinion shall issue this day.

THIS _____ day of September, 1994.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BILLY WOOD — PLAINTIFF

VS. — Civil Action No. 1:93cv374-D-D

GARY RICHARDSON, individually,
PAUL SWINDOL, individually,
ZACK STEWART, individually, and
ROBERT ROBINSON, individually — DEFENDANTS

ORDER

Pursuant to a memorandum opinion issued this day, it is ordered that:

1) the defendants' motion for summary judgment is hereby granted as to the plaintiff's claim under his First Amendment right to freedom of speech.

2) the defendants' motion for summary judgment is hereby denied as to the plaintiff's claim under his First Amendment right to freedom of association.

All briefs, memoranda, affidavits and other documents considered by the court in denying this motion for summary judgment are hereby incorporated into this order and are made a part of the record in this case.

ORDERED, this the _____ day of September, 1994.

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United States District Judge